

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)	
)	
v.)	DEFENSE PROPOSED CASE
)	MANAGEMENT ORDER
)	
MANNING, Bradley E., PFC)	
U.S. Army, (b) (6))	
Headquarters and Headquarters Company, U.S.)	
Army Garrison, Joint Base Myer-Henderson Hall,)	DATED: 29 February 2012
Fort Myer, VA 22211)	

1. The Defense submits the following proposed Case Management Order for the Court's consideration:

a. Per a docket request, the Government requested a trial date of 3 April 2012. The Defense requested that the trial begin on 30 April 2012.

b. Given the timeline detailed below and the need to accommodate the Government's request for a delay to respond to the Defense's initial motions, the Defense requests the Court to set trial for **5 June – 22 June 2012**. The Defense does not believe the trial will require the entire scheduled time.

2. Under the Government's proposed case calendar, approximately five months are spent dealing with pretrial motions. Although the case deals with a large volume of classified evidence, five months is an exaggerated time line for the resolution of preliminary issues. Additionally, the Government's proposed trial date is over two years (26 months) from the date of PFC Manning's arrest.

3. In the interest of assisting the Court in resolving timeline disputes, the Defense has adopted the Government's general format for the Case Management Order.

a. **Phase 1. Immediate Action (21 February – 16 March 2012)**

Issues Addressed	Filing Date	Response Date	Article 39(a)
1) Proposed Case Calendar	14 February 2012 *Secondary Filing on 29 March 2012	8 March 2012 * N/A	15 – 16 March 2012
2) Defense Motion for Appropriate Relief under MRE 505 3) Defense Bill of Particulars 4) Defense Motion to Compel Discovery 5) Defense Motion to Compel	14 February 2012	8 March 2012	15 – 16 March 2012

Issues Addressed	Filing Date	Response Date	Article 39(a)
Depositions ¹			
6) Government Discovery Due Diligence Statement to support Defense Waiver	8 March 2012	N/A	15 – 16 March 2012

b. Phase 2. Discovery Issues (23 March – 20 April 2012)

Issues Addressed	Filing Date	Response Date	Article 39(a)
1) Section III Disclosure	23 March 2012	N/A	19 – 20 April 2012
2) M.R.E. 404(b) Disclosures			
3) Defense M.R.E. 505(h) Notice	30 March 2012	13 April 2012 ²	19 – 20 April 2012
4) Reciprocal Discovery Requests	30 March 2012	13 April 2012	19 – 20 April 2012
5) Government Notice of Intent to Use Expert Witnesses	30 March 2012	N/A	19 – 20 April 2012
6) Defense Request for Expert Assistance	2 April 2012	13 April 2012	N/A
7) Production of Compelled Discovery	2 April 2012 ³	N/A	19 – 20 April 2012 ⁴
8) Member Questionnaire	13 April 2012	N/A	19 – 20 April 2012
9) Witness List Exchange	19 April 2012	26 April 2012 ⁵	N/A

c. Phase 3. Legal Motions, excluding Evidentiary Issues (30 March – 4 May 2012)

Issues Addressed	Filing Date	Response Date	Article 39(a)
1) Proposed Elements and Instructions for Article 92, Article 104, and Article 134 (Specifications 1 through 16)	9 April 2012	23 April 2012	3 – 4 May 2012
2) Proposed Elements and Instructions			

¹ If the Court orders the depositions, the Defense requests that these depositions take place between the 26th and 30th of March.

² If the Government objects to information contained in the Defense notice on classified privilege grounds, not being relevant, or proposes an alternative to the requested Defense information, the Defense will request an in camera review of the relevancy grounds by the Court. The basis for such a review is that the Defense should be treated similarly to the Government when it files for an in camera proceeding under M.R.E. 505(i)(4)(A).

³ The Government shall provide all compelled discovery by 2 April 2012 either to the Defense or to the Court pursuant to Military Rule of Evidence 505(i). If the Government fails to provide the compelled discovery by 2 April 2012, the Court will consider appropriate sanctions under Military Rule of Evidence 505(i)(4)(E).

⁴ Should the Government wish to contest the disclosure of classified information, it must request an in camera proceeding under M.R.E. 505(i). The Government is required to submit an affidavit *ex parte* to the Court demonstrating a reasonable expectation of damage to national security. From the perspective of the government, the Court must assess whether, in fact the information is properly privileged. This causes the Court to review whether the material is classified information, and if the disclosure would be detrimental to the national security. If the Court makes a finding that the Government meets the requirements with respect to the classified information, an in camera proceeding is held after appropriate notice to the Defense concerning the information at issue.

⁵ The Government must provide notice of any Defense requested witness that it intends to oppose production of at trial.

Issues Addressed	Filing Date	Response Date	Article 39(a)
for Lesser Included Offenses 3) Defense Unlawful Command Influence 4) Defense Improper Referral 5) Jurisdictional Defects 6) Defense Dismissal of Charges 7) Defense Unreasonable Multiplication of Charges 8) Defense Jurisdictional Defects 9) Constitutional Challenges to UCMJ, MREs and RCMs			

d. Phase 4 Evidentiary Issues (16 April – 11 May 2012)

Issues Addressed	Filing Date	Response Date	Article 39(a)
1) Compel Additional Discovery (if applicable) 2) Motions in Limine 3) Motions to Suppress Statements and/or items seized	16 April 2012	30 April 2012	10 – 11 May 2012
4) Government Notice to Defense of In Camera Review Request ⁶	27 April 2012	4 May 2012	10 – 11 May 2012
5) Notice of Accused's Forum selection and Notice of Pleas in writing	10 May 2012	N/A	10 – 11 May 2012

e. Phase 5 Miscellaneous Motions (4 May – 25 May 2012)

Issues Addressed	Filing Date	Response Date	Article 39(a)
1) Grunden Hearing for all Classified Information 2) Article 13 ⁷ 3) Speedy Trial, including Article 10 4) Compel Experts (if necessary) 5) Compel Witnesses (if necessary)	4 May 2012	18 May 2012	24 – 25 May 2012

⁶ If the Court determines an in camera proceeding is appropriate, the Government must provide notice to the Defense. The information within the Government's notice may be described by generic terms as the Court has approved, rather than identifying the classified information. Following the briefing and argument by the parties in the in camera proceeding, the Court determines whether any of the classified information must be disclosed to the Defense. Only classified information that is "relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible" is subject to disclosure. M.R.E. 505(i)(4)(B). The Court must decide this issue from the Defense's point of view.

⁷ The Article 13 motion will have several witnesses. If the Court wishes to handle the motion during the 24 – 25 May 39(a), the Defense recommends starting the 39(a) on the 23rd to allow for the needed time to present witness testimony.

Issues Addressed	Filing Date	Response Date	Article 39(a)
6) Pre-Admit Evidence 7) Pre-Authenticate Evidence 8) Pre-Qualify Experts 9) Requests for Judicial Notice 10) Any additional motion that does not have an identified deadline			
11) Government Request for Alternatives to Full Disclosure under M.R.E. 505(i)(4)(D) (IF necessary)	18 May 2012	N/A	24 – 25 May 2012

f. Phase 6. Member Selection (23 May – 4 June 2012)

Issues Addressed	Filing Date	Response Date	Article 39(a)
1) Voir Dire Questions	23 May 2012	N/A	4 June 2012
2) Court-Martial Flyer	23 May 2012	N/A	4 June 2012

4. The point of contact for this memorandum is the undersigned at (401) 744-3007 or by e-mail at coombs@armycourt martialdefense.com.

Respectfully submitted,

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